

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

First Appeal No. 1238 of 2019

District : Dhule

Krushna Shivaji Patil,
Age : 60 years,
Occupation : Now Nil,
R/o. Morane-Pra-Laling,
Taluka & District Dhule.

.. Appellant
(Original
applicant)

versus

1. Parmanand Rajendra Patil,
Age : Adult,
Occupation : Owner of Vehicle,
R/o. Swatantraya Sainik Colony,
Nagal Road, Chopda,
Dist. Jalgaon.

2. The Manager,
The Oriental Insurance Company
Ltd., Branch at Dhule.

.. Respondents
(Original
opponents)

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*Mr. Mrigesh D. Narwadkar, Advocate, for the
appellant.*

*Mr. Prakashsing B. Patil, Advocate, for
respondent no.01.*

*Mr. Dhananjay P. Deshpande, Advocate, for
respondent no.02.*

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11TH SEPTEMBER 2019

ORAL JUDGMENT :

01. Present appeal has been filed by the original claimant for enhancement in the compensation.

02. Present appellant - original claimant filed petition under Section 166 of the Motor Vehicles Act, 1988, vide M.A.C.P. No. 592 of 2010 before learned Member of the Motor Accident Claims Tribunal, Dhule, which was decided by the learned Member on 17-04-2017. The said petition was partly allowed and respondents no.01 and 02 were held jointly and severally liable to pay compensation of Rs. 35,000/-, including the amount under '*no fault liability*' together with interest at the rate of 8 % per annum.

03. Since the appeal is in respect of only enhancement, the facts giving rise to the original petition are narrated in short. The claimant suffered motor vehicle accident on 24-05-2010 at about 08.30 p.m. When he was crossing the road, he was hit by Tata Indica Car bearing no. MH-19/AP-2469 owned by respondent no.01 and insured with respondent no.02 on the date of the accident. The driver of the Tata Indica car was prosecuted for the said accident. The claimant had taken treatment at Sudha Hospital. He had sustained fracture to his leg and injury to his waist. According to the claimant, he had also

sustained head injury. It was contended that he had spent amount of Rs. 1,50,000/- on his medical treatment. The claimant was serving as Cashier with Canara Bank, Branch at Morane-Pra-Laling and was getting salary of Rs. 19,500/- per month. According to the claimant, he has sustained permanent disability and he is unable to work and therefore, he claimed compensation of Rs. 4,00,000/- with interest at the rate of 18 % per annum. Matter proceeded *ex parte* against respondent no.01. The Insurance Company in its written statement denied all the averments in the petition and it was contended that the accident had taken place due to the negligence of the claimant who had suddenly tried to cross the road.

04. Taking into consideration rival contentions, issues were framed. The claimant has led the evidence. The Insurance Company had examined driver of the offending vehicle.

05. After hearing both sides and perusing the evidence on record, as aforesaid, the learned Member of the Tribunal had partly allowed the petition. Being dissatisfied with the same amount of quantum granted by the Member of the Motor Accident Claims Tribunal, present appeal has been filed.

06. It will not be out of place to mention here,

that the respondents have not challenged any of the findings and therefore, it is not necessary for this Court to go into those aspects. It has been vehemently submitted on behalf of the appellant, that the learned Member of the Tribunal failed to consider that the disability certificate which had been proved by the claimant at Exhibit 38, by examining author of the certificate PW 02 Dr. Shinde shows disability to the extent of 40 %; whereas calculation has been made for compensation by the Member holding it to the extent of 15 % only, which is arbitrary. Further, the non-pecuniary damages have not been properly considered. It was also submitted that no amount regarding reimbursement of the medical bills has been granted.

07. Per contra, learned Advocate appearing for respondent no.02 - Insurance Company submitted that it was brought on record that the medical reimbursement was claimed by the claimant from his bank and he has received amount of Rs. 1,41,250/- towards medical bills reimbursement. Under such circumstance, the claimant cannot once again claim that amount. The Doctor who had issued the certificate has stated that the disability was up to 40 %; however, the learned Member has rightly considered that since no CT scan was done, it could not have been decided by the concerned Doctor that there was forgetfulness or loss of long term memory.

It was also noted that after the accident, the claimant had served in his bank and then took voluntary retirement in 2012 and at the time of his retirement, his salary was Rs. 32,000/- per month. Therefore, there was no loss to the claimant. Therefore, whatever amount has been awarded by the learned Member was correct.

08. At the outset, it is to be noted that the accident had taken place on 24-05-2010. It appears that the claimant had not filed the injury certificate but then he examined the concerned Doctor who had issued the disability certificate. The disability certificate was issued on 31-01-2011. According to PW 02 Dr. Shinde, he had examined the claimant on 29-01-2011 and he found injuries (1) head injury (2) fracture occipital bone malunited and (3) fracture lateral wall of right orbit and on the basis of these injuries, he assessed the disability up to 40 %. Important point to be noted is that in his examination in chief, he is totally silent regarding further observations and contents of disability certificate Exhibit 38, which were in the nature of forgetfulness, difficulty in long term memory, pain during cold weather and severe headache. In his cross examination, he has admitted that on the say of the patient, he had given those observations. That means, he had not assessed the claimant on the point of forgetfulness or difficulty in long term memory.

Interesting point to be noted is that in his examination in chief, all the details as to how i.e. the manner in which the accident had taken place has been given. So, if he had any forgetfulness, he could not have given those details. He has rather stated that due to the head injury he was in coma. But then, there is absolutely no documentary evidence supported by him. He had not examined the treating Doctor to support his contention. Therefore, at the beginning itself, it was stated that no pains were taken by the claimant to produce the injury certificate or discharge card on record. Whatever produced was the photo-copy which was not at all exhibited. It cannot be taken into consideration at this stage. Now, the claimant intends to relate his so called physical disability to his retirement. However, he has not produced any documentary evidence in the form of his application for voluntary retirement or had not examined any other document than PW 02 Dr. Shinde who had advised him to take voluntary retirement. The testimony of PW 02 Dr. Shinde is silent on the point that any such advice was given by him to the patient.

09. The claimant was serving as Cashier and it was not brought on record by him, that after the accident, he had prayed for change of duty or due to his own difficulties, the bank authorities had given him any other duty. When job of the cashier expects

attentiveness, able to calculate and even keep the memory at the work, what has come on record is that in 2012, he was transferred from Morane to Jalgaon and at Jalgaon, he worked for 5 - 6 months as Cashier. Further, he says that for 2 - 3 months, he was attending his duty by going up and down from Morane to Jalgaon and thereafter he says that he started residing at Jalgaon. That means, he was discharging his duty without any complaint either by himself or by the employer. Therefore, we cannot say that there was any nexus between the injuries he had sustained in the accident to that of his retirement. When he was able to discharge his duties, then the disability considered by the learned Member is perfectly correct.

10. Now, turning towards the evidence on record, that the medical bills have been got reimbursed by the claimant from his employer and in order to prove the same, the Insurance Company had examined the Branch Manager of Canara Bank, Morane Branch - RW 01 Bharat Bhaisane. It has come on record that the claimant had submitted bills amounting to Rs. 1,58,085/- and the bank has granted bills amounting to Rs. 1,41,250/-. When the claimant has already received the said amount i.e. by way of reimbursement, he cannot claim once again the said amount from the respondents in this case. He ought to have chosen as to whether he should get it

reimbursed from his employer or the respondents. However, it is to be noted that it has not been got clarified as to why the amount less than which was claimed by the claimant was given by the bank i.e. shortfall of Rs. 16,835/- is required to be reimbursed in this case though all the bills in original had not been produced by the claimant. The said evidence regarding submission of claim to the extent of Rs. 1,58,085/- was brought on record by the respondent - Insurance Company itself.

11. Further, as regards pain and suffering are concerned, what has come on record is that the claimant had sustained fracture to his occipital bone which was malunited and fracture to lateral wall of right orbit. Taking into consideration this aspect and the nature of injuries, the amount that has been granted by the learned Tribunal i.e. Rs. 10,000/- only appears to be less and therefore, amount of Rs. 30,000/- more is awarded towards pain and suffering. Further, the record shows that the claimant was admitted from 24-05-2010 to 07-06-2010 in the hospital and therefore, he would have incurred expenditure for attendance. No amount had been granted under the said head and therefore, said amount is required to be granted to him. Under the said head, amount of Rs. 5,000/- is awarded. Thus, the claimant is entitled to get Rs. 51,835/- more than that has been awarded by the Tribunal. As the

amount which was granted by the learned Member was meager and the Tribunal is duty bound to award just and reasonable compensation, the appeal deserves to be allowed partly.

12. Hence, the following order :-

(a) The appeal is hereby partly allowed.

(b) The judgment and award in M.A.C.P. No.592 of 2010 passed by the learned Member of the Motor Accident Claims Tribunal, Dhule, on 17-04-2017, is hereby set aside and modified to the extent of quantum only. Clause 02 of the operative order of the Tribunal is hereby deleted and in its place, said clause is substituted as under :-

"02. The respondents no.01 and 02 jointly and severally shall pay to the applicant an amount of Rs. 86,835/- [Rupees eighty six thousand eight hundred thirty five only], including amount towards 'no fault liability', from the date of application till actual realization of the entire amount, together with interest at the rate of 8 % per annum."

(c) The amount already deposited shall be adjusted towards the modified award.

(d) The deficit amount be deposited by the

respondents, in the Tribunal, within a period of two months. If the amount is deposited, it be disbursed to the claimant.

(e) There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

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